IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1172 OF 2007
AND
WRIT PETITION NO.1180 OF 2007

Sangita Mohan Gawade & Ors. ...Petitioners
(In both the Petitions)

Versus

Changunabai Vitthal Gawade & Ors. ...Respondents
(In both the Petitions)

Shri Rahul S. Kate for the Petitioners.

Shri K.B. Sonwalkar for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : JUNE 28, 2007.

P.C.:

1. These two Petitions can be disposed of by a common judgment as the same arise out of the same impugned order. The Petitioners in Writ Petition No.1172 of 2007 are the original Plaintiffs and the Respondents in the said Writ Petition are the original Defendants. The first Plaintiff is the widow of deceased Mohan Vitthal Gawade. The second and third Plaintiffs are the minor children of the first Plaintiff. The first Defendant is the mother-in-law of the first Plaintiff. The second Defendant is the brother-in-law of the first Plaintiff. The third and fourth Defendants are the sisters-in-law (sisters of the deceased husband) of the first Plaintiff.

2. The suit is filed by the Plaintiffs for partition and separate possession of the one third undivided share. According to the case made out by the plaintiffs, property described in paragraph 1(A) of the plaint was held by deceased Vitthal (i.e the father-in-law of the first Plaintiff). According to the case of the Plaintiffs the property described in paragraph No.1(B) of the plaint has been acquired in the name of the first Defendant out of the income of the joint family. According to the case of the Plaintiffs, the property described in paragraph 1(C) of the plaint has been acquired by the State Government for the public purpose. It is stated that as the said property stood in the name of the first Defendant, the compensation has been awarded in the name of the first Defendant. An application for temporary injunction was filed by the Plaintiffs at Exhibit 56. The prayer in the said application was that the price of the sugarcane crop on the property described in paragraph 1(A) of the plaint shall not be paid only to the first Defendant. A prayer was also made for issuing witness summons to the Indapur Sahkari Sakhar Karkhana Ltd for the production of bills regarding amounts paid by the said Co-operative sugarcane factory to the first Defendant in respect of sugarcane grown on the property described in paragraph 1(A) of the plaint. By the order dated 26th April, 2005, the trial Court restrained the first Defendant

from withdrawing the bill amount from the said Indapur Sahakari Sakhar Karkhana until further orders.

3. The Plaintiff also filed an application at Exhibit 5 for temporary injunction. The said Application was allowed by order dated 21st March, 2006 by which the Defendants have been restrained from ousting the Plaintiffs from their joint possession of the suit property. Being aggrieved by the aforesaid orders passed below Application at Exhibit 56 and Exhibit 5, there were two Appeals preferred by the first Defendant. By judgment and order dated 17th January, 2007 the learend District Judge I, Baramati, partly allowed both the Appeals. The learned Judge modified the order passed below Exhibit 5 by stating that the order of injunction will not apply to the property described in paragraph 1(B) of the plaint. The learned Judge also modified order passed on the application at Exhibit 56 by directing that the concerned sugarcane factory should pay Rs.30,000/- to the Plaintiffs by way of interim arrangement and shall pay the remaining amount under the said bill to the first Defendant.

4. Being aggrieved by the aforesaid order of the District Court, the original Plaintiffs have filed the aforesaid Petitions. As there were two Appeals before the District Court, two Writ Petitions have been

filed.

5. The learned counsel appearing for the Petitioners (Plaintiffs) submitted that the learned Appellate Court had no reason to disturb the order of injunction passed below Exhibit 5 in so far as it relates to property described in paragraph 1(B) of the plaint. He submitted that pending the substantive suit for partition, third party interests cannot be allowed to be created in respect of the said property and the Plaintiffs cannot be ousted from the said property. The learned counsel appearing for the Petitioner pointed out that the suit was filed in the year 2005 and the Application at Exhibit 56 was filed on 03rd April, 2006. He submitted that at the time when the District Judge passed the impugned order, a total amount of Rs.2,00,000/- was due and payable by Co-operative Sugarcane factory in respect of the sugarcane grown on property described in paragraph 1(A) of the plaint. He submitted that as the Plaintiffs are having one third share in the property described in paragraph 1(A) of the plaint, only a sum of Rs.30,000/- could not have been ordered to be paid to the Plaintiffs. The learned counsel appearing for the first Defendant (first Respondent) submitted that about 50% to 60% of the price of the sugarcane crop is required to be spent towards the expenditure on cultivation. He, therefore, submitted that the amount

of Rs.30,000/- fixed by the Appellat Court is just and proper and no interference is called for.

6. I have considered the submissions. The District Court has confirmed the order of injunction passed below the application at Exhibit 5 in so far as properties described in paragraph 1(A) and 1(C) are concerned. In so far as the property described in paragraph 1(B) is concerned, there is a prima facie finding recorded on the basis of documents on record that the said property was initially held by the father of the first Defendant. The District Court referred to various Mutation Entries which show that the property described in paragraph 1(B) of the plaint has come to the first Defendant from her father, and therefore, the same cannot be a joint family property. The said prima facie finding is based on documentary evidence. It is, therefore, not possible to interefere with the order of modification made by the District Court. It is obvious that as a substantive suit for partition is pending, all further transactions in respect of the property described in the plaint will be subject to final outcome of the suit.

7. According to the case made out by the Plaintiffs, they have one third share in the suit properties. In view of the provisions of the Hindu

Succession Act, 1956, prima facie, the Plaintiffs will have less than one third share in the suit properties and her share will be 3/10th. It is not possible to accept that more than one half of the price received from the sugar factory is required to be spent on the cultivation of the sugarcane crop. The learned Appellate Court has noted that a sum of Rs.2,00,000/- was lying with the sugar factory towards price of sugarcane crop. He has permitted the Plaintiffs to withdraw the sum of Rs.30,000/-. The suit for partition is likely to remain pending for some time. For every bill of sugarcane crop, the parties will have to approach the Court for necessary directions. Therefore, appropriate order will have to be passed in that behalf. In my view, 25% of price received from the sugarcane factory in respect of every bill can be taken as expenditure on cultivation and after deducting the said amount, 1/4th amount out of the balance amount can be paid to the Plaintiffs. The rest of the amount can be withdrawn by the first Defendant if the other Defendants have no objection for the same.

8. Hence, I pass the following order:

(i) The impugned Judgment and Order in so far as it the order below Exhibit 5 is concerned, stands confirmed.

(ii) The order passed below Exhibit 56 is hereby modified. Till the disposal of the suit the said Co-operative Sugar Factory will deposit the entire price of the sugarcane grown on the property mentioned in paragraph 1(A) of the plaint with the trial Court. Out of the amount deposited, 25% of the amount will be treated as cost of cultivation. The Plaintiffs will be allowed to withdraw 1/4th of the balance 75% amount. If the other Defendants have no objection, the trial Court will permit the first Defendant to withdraw the entire balance amount. This arrangement will continue every year till the disposal of the said suit.

(iii) The amount of Rs.02,00,000/- already lying with the sugar factory will be governed by the aforesaid arrangement.

(iv) It is made clear that the aforesaid arrangement will be subject to final outcome of the suit and subject to final accounts.

(v) To the aforesaid extent, the Writ Petitions are partly allowed.

(vi) The trial Court will dispose of the pending suit

as expeditiously as possible without being influenced by the impugned Judgment and Order and grant of limited relief by this Court.

JUDGE